

DATE: February 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19233

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has resolved, or made a good faith effort to resolve, all of his delinquent debts. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On May 24, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 10, 2002, and requested a hearing. The case was received by the undersigned on October 3, 2002, and a Notice of Hearing was issued on October 7, 2002.

A hearing was held on October 25, 2002, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted one hearing exhibit and one post-hearing exhibit. The transcript was received on November 7, 2002.

FINDINGS OF FACT

The Applicant is 43, married and has a high school education. He is employed by a defense contractor as an aircraft mechanic, and he seeks to obtain a DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth

in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds.

Subparagraph 1.a. The Applicant admits incurring this medically related debt in the amount of \$175. According to the Applicant, the medical group did not bill his insurer in a timely fashion. He did not know this debt existed until receiving the SOR. (Transcript at 22-23.) The Applicant paid this debt on October 29, 2002. (Applicant's Post Hearing Exhibit.)

Subparagraph 1.b. The Applicant admits that he owes a deficiency balance of \$7,029 on a vehicle that he surrendered in approximately 1997. The surrender of the vehicle occurred because the Applicant's wife needed major surgery and could no longer work. Accordingly, the Applicant could not afford to keep the vehicle. (Government Exhibit 2 at 1; Transcript at 23, 35.) Once the Applicant received the SOR, he contacted the bank in order to work out a payment arrangement. The bank refused to work out a payment arrangement and demanded payment in full. (Transcript at 26.)

Subparagraph 1.c. The Applicant admits incurring this medically related debt in the amount of \$101. According to the Applicant, the medical group did not bill his insurer in a timely fashion. He did not know this debt existed until receiving the SOR. (Transcript at 22-23.) The Applicant paid this debt on October 29, 2002. (Applicant's Post Hearing Exhibit.)

Subparagraph 1.d. The Applicant has consistently denied any knowledge of this alleged debt to a bank in the amount of \$3,778. (Government Exhibit 2 at 1; Transcript at 22.) The Government presented no evidence to show that the debt is the Applicant's other than credit reports (Government Exhibits 3 and 4.) A September 20, 2002, credit report supplied by the Applicant also shows the debt. The Applicant testified:

The other one, which is the Three Thousand Dollars (\$3,000.00) one, I have asked for proof of what that one is. I have been told it was a credit card. I have been told it was interest that was transferred over from the truck loan. I have been told it was something else. I can't remember off of my head now what it was.

And all I asked was, "Show me something that I signed with my signature and I will be glad to pay it." And they said, "Well, we can't do that. We don't have no documentation here."

Well, Your Honor, I really don't want to pay for something that I have no idea of what it is, and so I told them I refuse to pay it. (Transcript at 22.)

Mitigation.

The Applicant testified that his current financial situation is stable. His credit report shows that he is paying off his current debts in a timely fashion, including real estate loans. (Transcript at 27-30.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guidelines. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm

of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline F (Financial considerations)

Conditions that could raise a security concern:

(1) a history of not meeting financial obligations;

Conditions that could mitigate security concerns:

(3) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

(6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have financial difficulties that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has past due indebtedness with regards to Subparagraphs 1., 1.b. and 1.c. (Guideline F).

The Applicant has consistently and credibly denied any knowledge of the debt alleged in Subparagraph 1.d. Other than credit reports, there is no direct evidence that the debt is the Applicant's. This allegation is found for the Applicant due to the lack of substantial evidence supporting Subparagraph 1.d.

The Applicant has successfully mitigated the Government's case. Regarding Subparagraphs 1.a. and 1.c., the Applicant became liable for these medical debts because the providers failed to properly bill his insurance company. While the Applicant was understandable disturbed at having to pay a bill which his insurance should have handled, he has paid these two minor debts. These subparagraphs are found for the Applicant.

The debt alleged in Subparagraph 1.d. is substantial. However, there are two reasons the Applicant has mitigated the adverse inference of this particular debt. First, the Applicant had to surrender the vehicle because of his wife's serious medical condition. In addition, the Applicant has attempted to work out acceptable payment arrangements with the creditor. The creditor absolutely refuses to come to any accommodation with the Applicant. The Applicant's conduct is a good-faith effort to pay his just debts. This subparagraph is also found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.d.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge